

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 22918/08
by Jacob Adrian MIKKELSEN and Henrik Lindahl CHRISTENSEN
against Denmark

The European Court of Human Rights (First Section), sitting on 24 May 2011 as a Chamber composed of:

Nina Vajić, *President,*
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
George Nicolaou,
Mirjana Lazarova Trajkovska,
Julia Laffranque, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 23 April 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

The applicants, Mr Jacob Adrian Mikkelsen and Mr Henrik Lindahl Christensen are Danish nationals. The first applicant was born in 1973 and lives in Ulstrup. The second applicant was born in 1966 and lives in Århus. They are represented before the Court by Mr Tyge Trier, a lawyer practising in Frederiksberg.

The Danish Government ("the Government") are represented by their Agent, Mr Thomas Winkler from the Ministry of Foreign Affairs and Ms Nina Holst-Christensen from the Ministry of Justice.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicants are journalists, who in December 2005 were working for a national television station, *Danmarks Radio* (DR). The first applicant was the supervisor of the second applicant, who was a trainee. At that time, they were preparing a documentary about the import and distribution of illegal fireworks in Denmark. The programme was called "the Backers of Bombs", and dealt with illegal sales of fireworks, the individuals behind the sales and the dangers related thereto.

On 12 December 2005, as part of the research for the documentary, in a basement in Copenhagen, the applicants purchased illegal fireworks, namely eight chrysanthemum shells *(krysantemumbomber*), which according to the United Nations explosives shipping classification system based on hazards in shipping, are classified as Class 1.3G (fire, minor blast: pyrotechnics). The Danish Safety Technology Authority (*Sikkerhedsstyrelsen*) estimated that the handling of the display shells was safe, provided they remained in their original packaging and were dealt with by a person trained in fireworks use and approved by the authority. Moreover, it estimated that, depending on the wind, the safety distance from the public should be at least 100 metres.

Immediately after the purchase, the applicants drove to a police station in Copenhagen and handed over the chrysanthemum shells to the police.

By a City Court judgment of 12 September 2006 the applicants were convicted of having acquired illegal fireworks without permission from the municipality, contrary to section 7 of the Fireworks Act (*Lov om Fyrværkeri*) and each sentenced to a fine in the amount of 6,000 Danish kroner (DKK).

Before the City Court the applicants, the editor and the Detective Chief Superintendent of respectively Århus and Copenhagen were heard. The applicants explained that they had wanted to show how easy it was to buy illegal fireworks, but also to gather information about the suppliers. The applicants filmed the purchase with a hidden camera. They had to go through with the purchase because otherwise the seller might have become suspicious, which could have been dangerous. Moreover, they decided to buy a whole box containing eight chrysanthemum shells in total, because the box bears a number which gives information about the supplier. Before the purchase, the applicants had contacted the police in two different regions, respectively Århus and Copenhagen, and informed them of their

research and the documentary to be broadcast. The police in both regions demanded that the applicants hand over immediately any illegal fireworks which might come into their possession.

Moreover, the police in Århus had promised the applicants that they would not be prosecuted if they were found in possession of illegal fireworks. Subsequently, the applicants bought 50 illegal maroons *(kanonslag)* in Århus, but the purchase was not shown or mentioned in their programme, apparently because the fireworks were home-made and not imported.

As to the possibility of the applicants being exempted from prosecution by the police in Copenhagen, before the City Court, the second applicant stated that he had met with the Detective Chief Superintendent of the Copenhagen Police, who had told him that they were not allowed to purchase illegal fireworks. He had not promised the second applicant exemption from prosecution.

The first applicant stated that he had called the Detective Chief Superintendent of the Copenhagen police on 12 November 2005 and told him about "his dealing with the police in Århus and notified him that such a situation might arise. He did not remember whether the Detective Chief Superintendent said that it was a violation of the fireworks legislation if they completed the transaction. If he had received such a message, he would have passed it on. The conversation did not concern the lawfulness or unlawfulness of doing so ... the Detective Chief Superintendent said at some stage that the charge might be withdrawn if they disclosed from whom they had purchased the fireworks ...".

Before the City Court, the Detective Chief Superintendent of the Copenhagen Police stated that he had not met with the second applicant. He had received a telephone call from the first applicant, who had asked how they could get rid of illegal fireworks if they came into possession of such. He had answered that illegal fireworks had to be surrendered to the police. The first applicant had said that he had received the same answer from the police in Århus, but he did not repeat what the police in Århus had said. Since the journalist himself referred to them as "illegal fireworks", he assumed that the journalist knew that it was illegal to purchase them... he did not tell the first applicant that charges might be dropped.

The City Court gave the following reasons for its decision:

> "It is found established that the eight chrysanthemum shells were purchased because DR, where the [applicants] worked as journalists, wanted to prove in a television broadcast how easy it was to purchase illegal fireworks. It is further found established that the [applicants] wanted to surrender the illegal fireworks to the police, and that, prior to the purchase of the eight chrysanthemum shells, they had spoken to the Detective Chief Superintendent of the Copenhagen Police about surrender of any fireworks that might come into their possession. It appears from [the editor's] statement that the purchase of the shells had been discussed at editorial meetings before the purchase and that it had been approved by him and his superior at DR.

> Information on the trade in illegal fireworks, including who imports and resells them, is of public interest, for one reason because incorrect storage and use of illegal fireworks may cause serious accidents, but consideration for the possibility of the press to shed light on the illegal trade in fireworks is found not to legitimise the purchase of chrysanthemum shells contrary to the Fireworks Act. The [applicants'] claim for acquittal with reference to Article 10 of the European Convention on Human Rights is therefore not allowed. According to the [applicants'] statements and the statement by the Detective Chief Superintendent of Copenhagen Police, it is found as a fact that the [applicants] were never promised exemption from prosecution if they purchased the chrysanthemum shells. The defendants' claim for acquittal or remission of punishment is therefore not allowed. Accordingly, the defendants are found guilty as charged."

The applicants appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret*), henceforth the High Court, before which the applicants, the editor and the Detective Chief Superintendent of respectively Århus and Copenhagen Police were heard. Their statements corresponded essentially to the statements made before the City Court.

The programme "the Backers of Bombs" was broadcast on 13 November 2006 at 8 p.m. and lasted approximately one hour. In the documentary, the applicants sought to unravel the sales chain and clarify how the illegal fireworks entered Demark and to prove that professional importers in the fireworks industry were involved. It appeared from the programme that when the authorities found large lots of illegal fireworks, they often met with the explanation that the fireworks were only intended for re-exportation. The applicants sought to demonstrate, however, that the very same lots subsequently found their way back into Denmark where they were traded on the illegal market. For the preparation of the programme the applicants maintained that they received training in fireworks handling. Moreover, the police had given the applicants access to a number of seized lots of illegal fireworks, which they could examine and photograph. They also had access to several police files concerning seizure of illegal fireworks. During their research, the applicants discovered that a serial number was indicated on the original fireworks boxes which could be used to establish whether the fireworks came from the same lot and the same supplier, and to clarify whether fireworks for re-exportation in reality found their way back to Denmark. Thus, for example, regarding a large lot of maroons which arrived at the Port of Århus addressed to one professional importer, this lot was subsequently re-exported by another professional importer in Denmark, allegedly to a buyer in the Netherlands. By checking the serial number on boxes of illegal maroons which had subsequently been seized by the police from private individuals at various places in Denmark, the applicants reached the conclusion that the seized fireworks came from the re-exported lot, which in their view indicated that the professional importers were involved in the illegal sale of fireworks to private individuals.

Specific criticism was raised against the police for not having the backers convicted despite the devastating consequences to the victims of illegal fireworks and for the lack of police investigation regarding import avenues and channels for illegal fireworks and for not having examined the relevance of the said serial number. Representatives of the police and the Danish Safety Technology Authority acknowledged in the broadcast that they did not know the importance of the serial number and that this element had not figured sufficiently in the authorities' handling of the cases.

The television broadcast also described various fireworks accidents in which the possession and use of illegal fireworks by private individuals led to serious injuries.

Additionally, test explosions of both chrysanthemum shells and maroons were carried out to illustrate the dangerousness of the fireworks.

The hidden camera recording showing the acquisition by the applicants of the eight chrysanthemum shells lasted a few minutes. The box had a serial number, which turned out to be the same as on other boxes previously seized by the police from private individuals.

The programme received significant attention and gave rise to wide public debate.

On 7 March 2007, the City Court judgment was upheld by the High Court stating as follows:

> "The purchase of the chrysanthemum shells was carried out as part of the preparations for a television broadcast intended to illustrate the origin of the fireworks that are sold illegally at retail level and that have been seized at several places across the country. The clarification of the issue investigated by the [applicants] is of essential importance to society, and the broadcast shown on television is deemed to have significant news and information value.
>
> In determining whether the acquisition of the chrysanthemum shells attracts impunity due to the protection of the freedom of expression following from Article 10 of the European Convention on Human Rights, the regard for news communication must be balanced against the nature of the criminal act.
>
> According to the decisions of the European Court of Human Rights, the protection of the freedom of expression under Article 10 § 1 does not imply a general exemption for the [applicants] as journalists from the duty to observe applicable criminal law provisions, see Article 10 § 2.
>
> The rules on the purchase of fireworks are based on compelling safety considerations. The defendants had not applied to the municipal council for permission to acquire the chrysanthemum shells, see section 2, subsection 1 of the Fireworks Act as worded by Act no. 1060 of 9 November 2005, which entered into force on 14 November 2005. No information has been given as to whether the [applicants] would have been able to obtain permission to acquire the fireworks.
>
> The defendants have independently planned and carried out a criminal act, and compelling reasons are required for obtaining impunity for the act. This is not altered by the fact that also the seller of the chrysanthemum shells has committed a criminal act. On that basis, it is deemed that a balancing of the opposing interests cannot lead to impunity for the defendants' violation of section 7, subsection l, compared with

section 2, subsection 1, of the Fireworks Act under Article 10 of the European Convention on Human Rights.

According to the statement of the then Detective Chief Superintendent of the Copenhagen Police as read together with the defendants' statements, it is further found established that the Copenhagen Police had not held out to [the applicants] the prospect of no charges being brought against them if they acquired illegal fireworks. Before purchasing the chrysanthemum shells, the [applicants] had been in contact with the Detective Chief Superintendent of the Århus Police, who had indicated that, in view of the special purpose of the acquisition of illegal fireworks, the [applicants] would not be charged with the purchase. Accordingly, no charge was brought against the [applicants'] acquisition of 50 maroons, which they surrendered to the Århus Police on 6 December 2005. Notwithstanding this indication from the Århus Police, no basis is found for allowing remission of the punishment, see section 83 of the Danish Criminal Code for the [applicants'] subsequent purchase of fireworks in the Copenhagen area which they knew was illegal.

In view of the nature of the offence and the preparatory notes relating to the amendment of the Fireworks Act by Act no. 1060 of 9 November 2005, no basis is found for reducing the fines imposed on the defendants by the City Court, notwithstanding the stated journalistic background for the [applicants'] possession of the chrysanthemum shells."

Leave to appeal to the Supreme Court (*Højesteret)* was refused on 23 October 2007.

B. Relevant domestic law and practice

At the relevant time, the Fireworks Act, no. 193 of 24 May 1972 (amended, *inter alia,* by Act no. 1060 of 9 November 2005) read:

Section 2

(1) Fireworks and other pyrotechnical articles may not be transferred, acquired or used without permission from the municipal council.

(2) ...

It appears from the preparatory notes that approval had previously been granted by the police, but that it was desired to transfer the power to the municipal council, which already gave permission to other enterprises, including permission to store goods involving a high risk of explosion.

Section 7

(1) Any person who violates section 1, subsection1 or section 2, subsection 1, 2 or 3, or disregards the duty of disclosure under section 4, subsection 2 is liable to punishment by a fine, or in aggravating circumstances, by imprisonment for a term not exceeding two years.

(2) ...

The following appears from the preparatory notes:

> "It is deemed that the level [of punishment] is generally too low in view of the scope of the illegal fireworks market, the dangerousness of firework products and the number of accidents caused by fireworks. Particularly, illegal fireworks are extremely dangerous when used by non-skilled people, and the use of illegal fireworks has led to a number of deaths and other accidents in recent years. As it is the intention to increase safety, including increasing the sanctions for violation of legislation, it is assumed that the level of sentences will be generally raised in practice. It is thus expected that fines at the level stated in the following examples are aimed at: (...) The acquisition of fireworks without permission from the municipal council in violation of section 2, subsection 1, compared with section 7, subsection 1, of the Act: Consumers: A fine of not less than DKK 2,000. (...) It should be considered an aggravating circumstance if the violation is committed intentionally or by gross negligence, and material injury to persons or damage to property or the environment occurs, or if there was a concrete danger of such injury or damage."

The amendment introduced by Act no. 1060 of 9 November 2005, which entered into force on 14 November 2005, had to be seen in the light of a violent accident that happened at a fireworks factory in Denmark in November 2004. An aggregate 800 gross tons of fireworks exploded, a fireman had died during the fire extinguishing operation, and several persons had been injured. In addition, an industrial area with 12 enterprises was totally destroyed by the fire, and 355 houses were damaged. In view of the accident, the Government appointed a committee ('the Committee of Investigators'), to examine how the rules on approval of firework products, the sale and use of fireworks, the storage, handling and transport of firework products, regulatory control and sanctions in the fireworks field as well as the insurance situation of fireworks enterprises could be tightened.

Section 83 of the Criminal Code

> The punishment may be reduced below the limit prescribed if information on the act, the offender's person or other matters make it decisively appropriate. In otherwise mitigating circumstances, the punishment may be remitted.

COMPLAINT

The applicants complained that their criminal conviction violated their right to freedom of expression as provided in Article 10 of the Convention.

THE LAW

The applicants invoked Article 10 of the Convention, which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government submitted that the application was manifestly ill-founded within the meaning of Article 35 § 3(a) of the Convention in that, even assuming that there had been an interference within the meaning of Article 10 § 1, it had been justified under Article 10 § 2.

Recalling that journalists are not generally exempted from criminal liability, they pointed out that in the present case the applicants were convicted for having intentionally acquired eight illegal chrysanthemum shells themselves without permission from the municipality council. They had not been convicted for having produced a television programme or raised criticism against the authorities, and the documentary was not in any way impeded.

The Government further emphasised that the legislation on fireworks was based on compelling safety considerations, that the applicants were not certified pyrotechnicians and that the offence in question could have had very serious consequences if the box of chrysanthemum shells had detonated by accident during transportation.

The Danish courts recognised that the television broadcast was of public interest and the High Court specifically balanced the regard for news communication against the nature of the criminal act, but found that it could not lead to impunity for the applicants' violation of the Fireworks Act. Moreover, the penalty was not excessive or disproportionate.

In the Government's view, the applicants could not have expected impunity for the offence committed in Copenhagen with reference to the fact that the police in Århus had indicated that they would not bring charges against the applicants if, for the purpose of the programme, they acquired fireworks in that region. This is supported by the fact that after having received the indication from the police in Århus, the applicants chose to contact the police in Copenhagen about the same issue; a seemingly unnecessary act if they were under the impression that the issue had already been decided by the police in Århus.

Finally, the Government maintained that it was not necessary for the applicants to violate the Fireworks Act to demonstrate convincingly that fireworks were being traded in Denmark and to convey the criticism of the authorities' handling of this issue. They pointed out that the applicants had found that serial numbers on various boxes of maroons already seized from private individuals corresponded to the lot allegedly re-exported, which indicated that Danish professional importers were involved in the illegal sale of fireworks to private individuals. By contrast, the box with the eight chrysanthemum shells purchased by the applicants only showed that this box came from the same lot as a number of other seized boxes. Hence, the box with the eight chrysanthemum shells was not necessary for substantiating the criticism raised against the authorities or for proving that illegal fireworks were traded in Denmark, as these purposes of the broadcast had already been achieved by means of the boxes already seized.

The applicants maintained that they had not merely been convicted under the fireworks legislation; rather they were convicted under the fireworks legislation in the course of their work as journalists in researching a relevant and important story on illegal fireworks.

Moreover, in the applicants' view, their criminal conviction and the imposed sanction had not been necessary in a democratic society. In that respect they had regard, *inter alia,* to the importance of journalistic activity in uncovering the illegal import of fireworks, including the links between the official importers and the illegal supply of fireworks; the recognised journalistic method used by the applicants to expose an illegal fireworks market in Denmark; the way the broadcast and the research activities, including the purchase at issue, served to improve the general safety of fireworks in Denmark; the need for this information to be credibly presented in the media; the level of planning behind the action including the involvement of the editor; and the chilling effect on investigative journalism that will flow from the Court should it uphold the criminal conviction in question.

Further, the applicants submitted that the wording of the High Court judgment indicated that there had been no specific assessment of the value of the documentary to the society, despite the fact that it exposed not only a large illegal market of fireworks in Denmark, but also how the Danish authorities had dangerously failed to prosecute and secure convictions against the individuals involved behind the scenes on the illegal fireworks market. In addition, in the applicants' view, severe and disproportionate fines had been imposed on them and they were in addition registered as having a criminal record.

As to the safety consideration invoked by the Government, the applicants submitted that they had received training in handling fireworks and they surrendered the eight chrysanthemum shells immediately after the purchase to the police in Copenhagen in complete accordance with the instruction

given by the police. Thus, the applicant did not create a dangerous situation; on the contrary they assisted the authorities in obtaining illegal fireworks that would otherwise have been sold on the black market and in respect of fireworks they contributed to enhancing safety in general in Denmark by producing and broadcasting the documentary.

The applicant also had a well-founded expectation of impunity in that the police in Århus had already given them such a promise. It was therefore reasonable for them to expect that a uniform approach would be taken across the country, and that they would be able to undertake the same activities in Copenhagen without being prosecuted.

Finally, the applicants submitted that they purchased the chrysanthemum shells to get hold of the actual fireworks box for the purpose of tracing the supplier through the serial numbers on the box. They had to complete the transaction to prove that the deal actually took place and because it was unwise to interrupt the deal midway for safety reasons. The purchase of the eight chrysanthemum shells provided overall credibility to the documentary, but more importantly it illustrated an essential failure of the authorities in finding a purchase chain on the illegal market. Thus, when purchasing the illegal fireworks on 12 December 2005, the applicant documented the purchase chain between, on the one hand, the street sale and, on the other hand, the middle men and the organisers. The serial number on the box with the eight chrysanthemum shells corresponded to other illegal lots seized by the police. Thus it was documented that the illegal fireworks sold on the street originated from an organised crime network which had already had several lots seized in other regions of the country. Accordingly, the applicants alleged that their purchase documented, when comparing with other seized lots in the country, the failure of the authorities in convicting persons involved in the reselling of illegal fireworks. That key aim could not have been achieved by mere access to the lot already seized by the police.

The Court notes that the applicants were convicted of having acquired illegal fireworks without permission from the municipality, contrary to section 7 of the Fireworks Act and that the purchase was filmed and used in the applicants' journalistic documentary called "the Backers of Bombs", which dealt with illegal sales of fireworks.

Consequently, in the Court's view there was an interference with the exercise of the applicants' right protected by Article 10 of the Convention.

Such an interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.

It is undisputed that the interference pursued a legitimate aim and was prescribed by law. The crucial issue remains whether the interference was "necessary in a democratic society". The test of "necessity in a democratic

society" requires the Court to determine whether the "interference" complained of corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient (see Sunday Times *v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, § 62). It should be noted in that connection that all persons, including journalists, who exercise their freedom of expression undertake "duties and responsibilities" the scope of which depends on their situation and the technical means they use (see, for example, *Handyside v. the United Kingdom*, judgment of 7 December 1976, Series A no. 24, § 49). Thus, notwithstanding the vital role played by the press in a democratic society, journalists cannot, in principle, be released from their duty to obey the ordinary criminal law on the basis that Article 10 affords them protection (*Stoll v. Switzerland* [GC], no. 69698/01, § 101, ECHR 2007-...).

The Court observes that the applicants' documentary was not stopped or in any way impeded. Moreover, the High Court stated in its judgment of 7 March 2007 that the issue investigated by the applicants was of essential importance to society and that the broadcast shown on television had significant news and information value.

The applicants were convicted solely on the ground that they acquired eight illegal chrysanthemum shells without permission from the municipality, in breach of section 7 of the Fireworks Act. They were thus convicted of a strict liability offence.

In its reasoning the High Court stated, *inter alia,* that regard for news communication had to be balanced against the nature of the criminal act in the balancing test under Article 10 of the Convention; that Article 10 § 1 did not imply a general exemption for the applicants, as journalists, from the duty to observe applicable criminal law; that the rules on the purchase of fireworks were based on compelling safety considerations; that the applicants had not applied to the municipal council for permission to acquire the chrysanthemum shells under section 2, subsection 1, of the Fireworks Act; that the applicants had independently planned and carried out the criminal act; and that compelling reasons were required for obtaining impunity for the act. That finding was not altered by the fact that the seller of the chrysanthemum shells had committed a criminal act. On that basis, the High Court found that a balancing of the opposing interests could not lead to impunity for the applicants. The High Court thus gave relevant and sufficient reasons for the necessity of sanctioning the applicants, and did so in application of Article 10 of the Convention.

Before the Court the applicants have alleged that the purchase of the eight chrysanthemum shells was necessary to illustrate the failure of the authorities in finding a purchase chain on the illegal market. More concretely they maintained that the serial number on the box with the eight chrysanthemum shells corresponded with other illegal lots seized by the

police, which thus documented that the illegal fireworks sold on the street originated from an organised crime network (as several lots had been seized already in other regions of the country). The Government contended that it was unnecessary for the applicants to violate the Fireworks Act in order to demonstrate that illegal fireworks were being traded in Denmark and that the serial number on the box with the eight chrysanthemum shells purchased by the applicants only showed that this box came from the same lot as a number of other boxes already seized by police.

The Court notes that before the domestic courts the applicants explained that they had wanted to show how easy it was to buy illegal fireworks, but also to gather information about the suppliers. It also notes that the applicants had access to a number of lots of illegal fireworks already seized by the police at various private locations in Denmark. The Court is therefore not convinced by the applicants' allegation that the purchased box with the eight chrysanthemum shells was the essential box needed to demonstrate that illegal fireworks sold on the street originated from an organised crime network, or that the purchase was necessary to make the documentary more credible, or that the applicants could not have reported on the failures of the authorities without being in violation of section 7 of the Fireworks Act (see, for example, *Sascha Adamek v. Germany* (dec.), 22107/05, on 25 March 2008).

As regards the question of impunity because the applicants had previously been promised exemption from prosecution by the police in Århus, the Court reiterates the finding of the High Court, that: "According to the statement of the then Detective Chief Superintendent of the Copenhagen Police as read together with the defendants' statements, it is further found established that the Copenhagen Police had not held out to the applicants the prospect of no charges being brought against them if they acquired illegal fireworks. Before purchasing the chrysanthemum shells, the applicants had been in contact with the Detective Chief Superintendent of the Århus Police, who had indicated that, in view of the special purpose of the acquisition of illegal fireworks, the applicants would not be charged with the purchase. Accordingly, no charge was brought against the applicants for the acquisition of 50 maroons, which they surrendered to the Århus Police on 6 December 2005. Notwithstanding this indication from the Århus Police, no basis is found for allowing remission of the punishment, see section 83 of the Criminal Code for the applicants' subsequent purchase of fireworks in the Copenhagen area which they knew was illegal".

The Court notes for clarification that in the case before it there is no information as to the classification and technical handling of the said 50 maroons, or details about the applicants' purchase thereof, and that for some reason the applicants did not show or mention that purchase in their documentary.

However, it is undisputed that the applicants never applied to the municipality in Århus or Copenhagen for permission to acquire fireworks as prescribed by section 2 of the Fireworks Act and that a violation thereof was a strict liability offence under section 7 of the Act.

It is also undisputed that the applicants contacted both the Århus Police and the Copenhagen Police before their respective purchases of illegal fireworks in the two separate police districts.

The High Court thoroughly examined the question as to whether the applicants had also been promised impunity by the Copenhagen Police. It found that that was not the case and that there was no basis for allowing remission of the punishment under section 83 of the Criminal Code for the purchase of the fireworks in the Copenhagen area.

On the basis of the material before it, the Court finds no grounds for concluding that such finding was wrong.

Finally, in the Court's view, the penalty imposed, a fine in the amount of DKK 6,000 cannot be considered excessive.

Having regard to the above circumstances, it cannot be said that the applicants' conviction amounted to a disproportionate and hence unjustified restriction of their right to freedom of expression. It follows that the application must be rejected as manifestly ill-founded, in accordance with Article 35 §§ 3(a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen	Nina Vajić
Registrar	President